United Nations E/C.18/2018/4

Economic and Social Council

Distr.: General
9 March 2018

Original: English

Committee of Experts on International Cooperation in Tax Matters
Sixteenth session
New York, 14–17 May 2018
Item 3 (b) of the provisional agenda*
Discussion of substantive issues related to international cooperation in tax matters: report of the Subcommittee on Updating the United Nations Model Double Taxation Convention between Developed and Developing Countries

Progress on the 2017 update of the United Nations Model Double Taxation Convention between Developed and Developing Countries

Note by the Secretariat

1. The Committee of Experts on International Cooperation in Tax Matters made substantial progress in the area of international taxation by developing an updated version of the United Nations Model Double Taxation Convention between Developed and Developing Countries, which was concluded in substance in 2017, although some non-substantive editing remains to be done.

2. At its fourteenth session, held in New York from 3 to 6 April 2017, the Committee requested the Secretariat to work until October on the revision of the Model Convention with a small group of members, acting in their personal capacities (see E/2017/45-E/C.18/2017/3, para. 20).

3. One of the highlights of the 2017 update of the Model Convention is the introduction of article 12A on fees for technical services, an article not found in the Model Tax Convention on Income and on Capital of the Organization for Economic Cooperation and Development (OECD). Its introduction responds to a treaty practice that is increasingly applied in developing countries and increases the prominence of source-based taxation in the United Nations Model Convention, an issue that is of special but not unique relevance to developing countries. The 2017 update also incorporates some of the language of the Base Erosion and Profit Shifting Project of OECD and the Group of 20.

* E/C.18/2018/2.

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4. In the 2017 update, the Committee made several changes to the United Nations Model Convention related to base erosion and profit shifting to prevent taxpayers from using the provisions of bilateral tax conventions improperly to obtain treaty benefits. First, the title of the Convention was amended to refer expressly to "the prevention of tax avoidance and evasion". Second, a new preamble was added, clarifying that tax conventions are not intended to create opportunities for tax avoidance or evasion, including tax avoidance through treaty-shopping arrangements. Third, a new general anti-abuse rule was included in article 29, paragraph 9, which, together with the specific anti-abuse rules included in tax treaties, is intended to prevent transactions and arrangements from being granted treaty benefits in circumstances where granting such benefits would be contrary to the object and purpose of the Model Convention. These additions will make the provisions of the Model Convention more effective in preventing treaty abuse.

5. The other main changes to the United Nations Model Convention compared with the previous version, published in 2012, are as follows:

(a) Article 1 was replaced to include a fiscally transparent entity clause and a saving clause that clarifies that residence taxation is generally preserved under tax treaties;

(b) Article 4 was modified to include a new tie-breaker rule for determining the treaty residence of dual-resident persons other than individuals;

(c) Article 5 was modified to prevent the avoidance of permanent establishment status;

(d) Article 10 was modified to change the circumstances in which a lower rate applies for dividends on direct ownership of shares above a 25 per cent threshold;

(e) Article 13, paragraph 4, was replaced to modify the scope of the land-rich company rule;

(f) Article 13, paragraph 5, was modified for consistency with article 13, paragraph 4;

(g) Articles 23 A and 23 B were changed to clarify that there is no obligation to provide relief for tax imposed solely on a residence basis.

6. The commentaries on the articles were updated to reflect these changes.

7. The 2017 update of the United Nations Model Convention is undergoing final editing by the Secretariat and the small group of persons asked by the Committee to contribute to that work. While that work has proved more difficult than expected and has taken longer than originally intended, it is expected to conclude in time to allow the Model Convention to be published electronically in May 2018, on the occasion of the sixteenth session of the Committee, with production in book form to follow thereafter.